

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**



No. 76-7299  
76-7299

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

MISS MAE M SMITH a/k/a MISS MARY M SMITH

Plaintiff - Appellant

v

MR FRED BARONS, FBI AGENT, et al.,

Defendants - Appellees

---

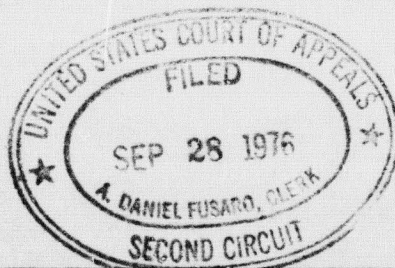
On Appeal from the United States District  
Court for the Eastern District of New York

---

BRIEF FOR APPELLEE

---

OSCAR G RUBIN  
Defendant In Person  
233 Broadway  
New York, NY 10007





## TABLE OF CONTENTS

	Page
Statement of the Issues.....	1
Statement of the Case.....	1
The Facts.....	2
a. Proceedings before the District Court.....	2
Argument.....	3
Preliminary Statement.....	3
1. The District Court correctly held that the Complaint be dismissed for violating FRCP 8 (e) (1).....	3
Conclusion.....	3



# TABLE OF CITATIONS

Page

## Statutes:

CPLR Sec 215 (3) 3

28 U S C Sec 1331 and 1332 3

## Court Rules:

Federal Rules of Civil Procedure  
8(e) (1) 3

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

No. 76-7299

---

MISS MAE M SMITH a/k/a MISS MARY M SMITH  
Plaintiff-Appellant

v

MR. FRED BARONS, FBI Agent, et al.,  
Defendants-Appellees

---

On appeal from the United States  
District Court for the Eastern  
District of New York

---

BRIEF FOR APPELLEE

---

STATEMENT OF THE ISSUE

1. Whether the District Court correctly held that the Complaint be dismissed.

STATEMENT OF THE CASE

This case is before the Court upon the appeal by Miss Smith from an order entered by the United States District Court for the Eastern District of New York, per Judge Mark A. Constantino, dismissing her complaint with prejudice.



### THE FACTS

Plaintiff has instituted an action alleging at most defamation which allegedly occurred about eighteen years ago. The Defendant has denied all the allegations contained in her complaint.

### PROCEEDINGS IN THE DISTRICT COURT

Plaintiff instituted an action in the District Court against many defendants. Motion made to dismiss the complaint were granted by order of the District Court dated March 4th 1976 on the ground that the complaint grossly violated Rule 8 FRCP. The Court permitted the plaintiff to replead which she did. Motion were made to dismiss the repleading and by order of Hon. Mark A. Constantino, the motion of each defendant was granted dismissing the complaint with prejudice since it violated Rule 8 (e) (1) FRCP.



ARGUMENT      PRELIMINARY STATEMENT

1. The complaint violates Federal Rules of Civil Procedure 8(e) (1) which states that each averment of a pleading shall be simple, concise and direct.
2. The Court lacks jurisdiction of the subject matter because plaintiff and defendants or some of them are residents of New York and this action cannot be grounded upon diversity of citizenship as provided in 28 U S C Sec 1332. Further, since there is no substantial federal question involved, subject matter jurisdiction is lacking under 28 U S C Sec 1331.
3. The cause of action, if any, in defamation is barred by the Statute of Limitations under the State statute of limitations CPLR Sec 215 (3) inasmuch as the alleged defamation is supposed to have occurred eighteen years ago.

CONCLUSION

IT is respectfully submitted that the order of the District Court on review be affirmed.

OSCAR G. RUBIN  
Defendant in Person  
233 Broadway  
New York City



UNITED STATES COURT OF APPEALS  
SECOND CIRCUIT

\* - - - - -x

Miae Mae M Smith etc.,  
Plaintiff,

-against-

MR Fred Barons, et al.,  
Defendants.

- - - - -x

State of New York  
County of New York ) SS

Annette Rubin being duly sworn deposes and  
s ys;

Deponent is not a party to the action, is over the age  
of 18 years, resides at 676 Boelsen Dr. Westbury, New York.  
That on the 28 day of September 1976 deponent served the  
within Brief on Miss Mae M Smith the plaintiff in this action  
at 83-06 Vietor Avenue c/o Coleman Family, Elmhurst, NY 11373  
the address designated by said plaintiff for that purpose by  
depositing same enclosed in a postpaid properly addressed  
wrapper in an official depository under the exclusive care  
and custody of the U S Post Office Dept in the State of New  
York.

Sworn to before me this

28 day of Sept 1976

*Oscar Rubin*

*Annette Rubin*

OSCAR G. RUBIN  
NOTARY PUBLIC, State of New York  
No. 30-8694750  
Qualified in Nassau County  
Term Expires March 30, 1980 78